



August 20, 2001

Ms. Jan Clark
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-3656

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150879.

The City of Houston (the "city") received a request for the following three categories of information: 1) "the proposals for leasing the Compaq Center, which were presented by Crescent and Lakewood Church;" 2) "the names of each individual and associations with entities of the selection committee for the leasing of the Compaq Center;" and 3) information regarding whether "the public can attend the selection committee's meetings" as well as the dates of the meetings. You claim that the requested information responsive to item one above is excepted from disclosure under section 552.104 of the Government Code. You state that the city is releasing to the requestor all other information and documents it does not believe to be excepted from disclosure. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304.

First, we note that although you inform us that you only seek to withhold information responsive to item one above and that all other information is being released to the requestor, the requestor stated to this office in a letter dated June 29, 2001 that the city had made no information available to her. Therefore, as you have raised no exceptions for items two and three of the request, you must immediately release such information to the requestor if you have not already done so. *See* Gov't Code §§ 552.006, .301(a), .302. We will next address your argument for the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592

(1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978).

You inform us that the submitted documents are proposals submitted to the city in response to a request for proposal.¹ You state that the city, via the selection committee, has not yet finalized its review of the submitted proposals and has not yet entered into negotiations with any entity. You further assert that if the selection committee determines that none of the proposals are satisfactory, or if the city council rejects the final contract, the city may have to seek further proposals from other entities. On the basis of your arguments and our review of the information, we conclude that the city may withhold the submitted information from the requestor under section 552.104 at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹We note that the requestor seeks "the proposals for *leasing* the Compaq Center, which were presented by Crescent and Lakewood Church," (emphasis added), and that you have submitted to this office the proposals received by the city from Crescent and Lakewood Church for a contract to *redevelop* the Compaq Center. We therefore assume that the city has made a good faith determination that these contract proposals are responsive to the request. See Open Records Decision No. 561 at 8-9 (1990), 87 (1975) (governmental body must make good faith effort to relate a request to information held by it).

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 150879

Enc. Submitted documents

c: Ms. Karen Kay Kristopher
5161 San Felipe, Suite 320
Houston, Texas 77056
(w/o enclosures)